2001

Erkan Ereren v. Snowbird Corporation, a Utah Corporation : Brief of Appellee

Utah Court of Appeals

Dennis C. Ferguson; Kurt M. Frankenburg; Williams and Hunt; Attorneys for Defendant-Appellee.
Peter C. Collins; Peter C. Collins LLC; Attorney for Appellant.

IN THE UTAH COURT OF APPEALS

ERKAN ERERENS,	:	
	:	**BRIEF OF APPELLEE**
Appellant,	:	**SNOWBIRD CORPORATION**
	:	
vs.	:	
	:	
SNOWBIRD CORPORATION, a Utah corporation,	:	Appeal No. 20010528-~~SC~~ CA
	:	
	:	
Appellee.	:	Argument Priority 15

APPEAL FROM A JUDGMENT ON A JURY VERDICT OF THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY HONORABLE ROGER LIVINGSTON, DISTRICT JUDGE

Peter C. Collins (A0700)
BUGDEN, COLLINS & MORTON
623 East 2100 South
Salt Lake City, UT 84106
Telephone: 801-467-1700
Attorneys for Plaintiff/Appellant

Dennis C. Ferguson (A01061)
Kurt M. Frankenburg (A5279)
WILLIAMS & HUNT
257 East 200 South, Suite 500
P. O. Box 45678
Salt Lake City, UT 84145-5678
Telephone: 801-521-5678
Attorneys for Defendant/Appellee Snowbird Corporation

IN THE UTAH COURT OF APPEALS

ERKAN ERERENS,	:	
	:	**BRIEF OF APPELLEE**
Appellant,	:	**SNOWBIRD CORPORATION**
	:	
vs.	:	
	:	
SNOWBIRD CORPORATION, a Utah corporation,	:	Appeal No. 20010528-~~SC~~ CA
	:	
	:	
Appellee.	:	Argument Priority 15

APPEAL FROM A JUDGMENT ON A JURY VERDICT OF THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY HONORABLE ROGER LIVINGSTON, DISTRICT JUDGE

Peter C. Collins (A0700)
BUGDEN, COLLINS & MORTON
623 East 2100 South
Salt Lake City, UT 84106
Telephone: 801-467-1700
Attorneys for Plaintiff/Appellant

Dennis C. Ferguson (A01061)
Kurt M. Frankenburg (A5279)
WILLIAMS & HUNT
257 East 200 South, Suite 500
P. O. Box 45678
Salt Lake City, UT 84145-5678
Telephone: 801-521-5678
Attorneys for Defendant/Appellee Snowbird Corporation

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF JURISDICTION

This is an appeal to the Utah Supreme Court from a final judgment of the Third District Court of Salt Lake County. The appeal has been transferred to the Court of Appeals pursuant to Utah Code Ann. §78-2a-3(2)(j) (1992).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

ISSUE I

Did the Court abuse its discretion and commit reversible error in denying Ereren's Motion to Compel answers to certain interrogatories and document requests to which Snowbird objected as unduly burdensome, overly broad and not reasonably calculated to lead to the discovery of admissible evidence?

Standard of Review. The trial court's denial of Ereren's Motion to Compel may not be reversed unless Ereren establishes that the court's ruling was a clear abuse of discretion. Pack v. Case, 2001 UT App. 232, ¶ 16, 30 P.3d 436; Archuleta v. Hughes, 969 P.2d 409, 414 (Utah 1998). A trial court abuses its discretion if there is "no reasonable basis for the decision." Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993). A trial court's ruling will be overturned only if it "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." Kunzler v. O'Dell, 855 P.2d 270, 275 (Utah Ct. App. 1993).

ISSUE II

Has Ereren failed to demonstrate that Judge Livingston abused his discretion in admitting under Rule 402, Utah Rules of Evidence, conflicting financial statements relevant to refute Ereren's claims that he had a thriving medical practice until his alleged ski injury?

Standard of Review. A trial court abuses its discretion if there is "no reasonable basis for the decision." Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993). A trial court's ruling will be overturned only if it "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." Kunzler v. O'Dell, 855 P.2d 270, 275 (Utah Ct. App. 1993).

ISSUE III

Has Ereren failed to demonstrate that Judge Livingston's admission of Ereren's conflicting financial statements was harmful?

Standard of Review. If Ereren were able establish a clear abuse of discretion on this evidentiary issue, he would still required to establish that the Court's ruling was "harmful." Jones v. Cyprus Plateau Mining Corp., 944 P.2d 357, 360 (Utah 1997). "Harmful error occurs where the likelihood of a different outcome in the absence of the error is sufficiently high so as to undermine confidence in the verdict." Id.

ISSUE IV

Has Ereren failed to demonstrate that Judge Livingston abused his discretion in admitting under Rule 402, Utah Rules of Evidence, evidence of Ereren's loss through

gambling of funds loaned by Johnson & Johnson for use in his medical practice as being relevant to his claims that he had a thriving medical practice until his alleged ski injury?

Standard of Review. A trial court abuses its discretion if there is "no reasonable basis for the decision." Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993). A trial court's ruling will be overturned only if it "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." Kunzler v. O'Dell, 855 P.2d 270, 275 (Utah Ct. App. 1993).

ISSUE V

Has Ereren failed to demonstrate that Judge Livingston's admission of evidence of Ereren's gambling was harmful?

Standard of Review. If Ereren were able establish a clear abuse of discretion on this evidentiary issue he would still required to establish that the Court's ruling was "harmful." Jones v. Cyprus Plateau Mining Corp., 944 P.2d 357, 360 (Utah 1997). "Harmful error occurs where the likelihood of a different outcome in the absence of the error is sufficiently high so as to undermine confidence in the verdict." Id.

ISSUE VI

Has Ereren failed to demonstrate that Judge Livingston abused his discretion in admitting under Rule 402, Utah Rules of Evidence, evidence of Ereren's bankruptcy filing relevant to his claims that he had a thriving medical practice until his alleged ski injury?

Standard of Review. A trial court abuses its discretion if there is "no reasonable basis for the decision." Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993). A

trial court's ruling will be overturned only if it "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." Kunzler v. O'Dell, 855 P.2d 270, 275 (Utah Ct. App. 1993).

ISSUE VII

Has Ereren failed to demonstrate that Judge Livingston's admission of evidence of Ereren's bankruptcy filing was harmful?

Standard of Review. If Ereren were able to establish a clear abuse of discretion on this evidentiary issue, he would still be required to establish that the Court's ruling was "harmful." Jones v. Cyprus Plateau Mining Corp., 944 P.2d 357, 360 (Utah 1997). "Harmful error occurs where the likelihood of a different outcome in the absence of the error is sufficiently high so as to undermine confidence in the verdict." Id.

ISSUE VIII

Did Judge Livingston properly exercise his discretion in precluding plaintiff Ereren from calling a surprise "rebuttal" witness, a lawyer friend of Ereren's counsel, first disclosed midway through trial, to purportedly testify regarding an issue that Ereren had explored during discovery: the alleged frequent incidence of jumping in the area of the alleged accident?

Standard of Review. Judge Livingston's ruling on this issue may not be reversed, unless appellant Ereren demonstrates a clear abuse of discretion by the judge. Turner v. Nelson, 872 P.2d 1021, 1023 (Utah 1994). A trial court abuses its discretion if there is "no reasonable basis for the decision." Crookston v. Fire Ins. Exch., 860 P.2d 937, 938

(Utah 1993). A trial court's ruling will be overturned only if it "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." Kunzler v. O'Dell, 855 P.2d 270, 275 (Utah Ct. App. 1993).

DETERMINATIVE RULES

The following Utah Rules of Evidence are determinative of many of the issues presented on this appeal. There are no statutes or regulations pertinent to the issues on appeal.

Rule 401. Definition of "relevant evidence."

> "Relevant evidence" means any evidence having any tendency to make the existence of any fact that is of any consequence to the determination of the action more probable or less probable than it would otherwise be without the evidence.

Utah R. Evid. 401.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Utah R. Evid. 402

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Utah R. Evid. 403.

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings.

This is a personal injury action. Plaintiff Ereren claimed he was injured while in a beginners ski school class at Snowbird in March of 1995. Ereren alleged that a Snowbird ski instructor negligently caused him to be positioned in a dangerous location on an expert ski run and that a phantom airborne snowboarder landed on his head. He claimed millions of dollars in lost income resulting from this alleged ski accident.

Ereren was unable to identify the location of the accident, the ski instructor, any witnesses, or any documentation of the alleged accident. Indeed, Ereren changed his sworn deposition testimony and the alleged location of the collision shortly before trial. (R. at 1415, pp. 40-42; R. at 717-720.) Despite Snowbird's identification of all ski instructors who taught on the alleged day of the collision, Ereren testified that none of these instructors taught his class. Snowbird had no record of the alleged accident and maintained that no such accident ever occurred.

After a four-day jury trial, the jury returned a special verdict finding that Ereren failed to prove that the alleged accident ever occurred. Ereren now appeals from that verdict and the trial court's denial of his Motion for New Trial.

B. Statement of Facts.

1. Ereren is a general surgeon who lives and works in southern California. (R. at 1415, pp. 7, 9.)

2. On December 9, 1998, Ereren commenced this negligence action to recover for personal injury he claims he sustained while in a ski school class at Snowbird Ski Resort more than three and a half years earlier. In his Complaint, he claimed the accident occurred on March 8, 1995. (R. at 1-6.)

3. Snowbird had no record of Ereren's alleged accident. (R. at 1415, pp. 52-53.)

4. Snowbird conducted discovery, including interrogatories, document requests and depositions, in an attempt to determine the specifics of the alleged accident. (R. at 13, 44-45, 152, 189-190, 221, 485-487, 1415.)

5. Ereren claimed that a Snowbird ski instructor negligently placed him in a blind spot on a ski run, causing him to be hit in the head and neck by a phantom airborne snowboarder. (R. at 2-3.)

6. Ereren, however, could not identify a single witness to the accident other than himself and another student in his ski class, allegedly a physician from Florida with a first name of "Scott." (R. at 1415, pp. 34-36.)

7. Ereren's story, however, continuously changed. First Ereren claimed the accident occurred on March 8, 1995. (R. at 1-6.) Then he claimed it occurred on March 9, 1995. (R. at 1415, pp. 27-28.)

8. Ereren testified in his deposition that the accident occurred on a ski run called Chip's Face. (R. at 1415, p. 36.)

9. Later, after Snowbird witnesses had testified that such an accident could not possibly have occurred on Chip's Face, Ereren changed his testimony to claim that the accident occurred in an entirely different location on the ski mountain. (R. at 717-720.)

10. Ereren testified that he was a beginning skier, having skied only three or four days in his life, and that he skied with the same blonde female ski instructor two days in a row, during his March 1995 trip to Snowbird. (R. at 1415, pp. 27-28.)

11. From Ereren's description of instructor, the size of his class and his skiing ability, Snowbird was able to use ski school records to narrow the possibilities to two blonde female instructors who taught on March 9, 1995. (R. at 1412, p. 388.)

12. The only two possible ski instructors were produced for depositions. After they each gave credible testimony that no such ski accident ever occurred in one of their ski classes (R. at 1418, p. 67; R. at 1419, pp. 38-39, 43), Ereren

claimed that neither of these instructors was the one who taught his class. (R. at 1413, pp. 488.)

13. While Ereren claimed that he thought the ski instructor had a first or last name of Laura, Lori or Lauren, Snowbird had no ski instructor by any of those names teaching adult classes during the 1994-1995 season. And no instructor by any of those names taught adult ski lessons at Snowbird on March 9, 1995. (R. at 1412, p. 372; R. at 1417, pp. 22-23.)

14. Snowbird produced every record in its possession with Ereren's name on it, and every record in its possession relating to ski school classes on March 8 and 9, 1995. (R. at 1411, p. 213; R. at 1412, p. 364.)

15. When Snowbird produced the lesson logs for the dates at issue showing the names of the only two possible ski instructors matching Ereren's description, Ereren argued that the records were false or incomplete. (R. at 1417, p. 24.)

16. Snowbird produced two ski instructors, the Director of Mountain Operations, the Ski School Director, and the Director of Mountain Development for depositions. (R. at 1418, 1419, 1416, 1417 and 175-176.)

17. Ereren served written discovery on Snowbird demanding that Snowbird provide detailed information on all of the 230 ski instructors it employed in March of 1995 (R. at 55) and that it comb all of its lodging records for a ten-day

period in March 1995 to find any records of guests from Florida or physician guests. (R. at 61.)

18. When Snowbird objected to Ereren's discovery on the grounds that it was overly broad, unduly burdensome and might invade the privacy of guests, Ereren filed a Motion to Compel. (R. at 52-67.) After briefing, the Court agreed with Snowbird and denied Ereren's Motion. (R. at 156-157.)

19. Ereren claimed he had a thriving medical practice until his alleged skiing accident and resulting neck injury. He claimed Snowbird was liable for millions of dollars in lost past and projected future income from his medical practice. (R. at 1413, p. 699.)

20. Snowbird discovered, however, that Ereren's medical practice was in a steep decline well before the date of Ereren's alleged ski injury. (R. at 1414, pp. 754-755.) In fact, Ereren had borrowed $1 million dollars for expansion of his medical practice, but rather than use the money for his business, he withdrew it all to use for personal expenses. (R. at 1414, p. 754.) The amount of money borrowed coincides with the amount of money gambled and lost by Ereren after the loans were made. (R. at 1413, pp. 526-530.) Ereren had two sets of financial statements, one of which he used to obtain loans for his practice, and the other which was for internal use only, reflecting the true and much lower value of his practice. (R. at 1414, pp. 748-753.) In addition, Ereren had filed a prior lawsuit in 1994 against a California hospital. (R. at 1413, pp. 534-536.) He alleged that the hospital had

caused his referrals to drop by 40 percent and had caused him emotional distress, neck pain and headaches, affecting his ability to perform surgery. (R. at 1413, pp. 537, 541, 544, 547, 548.)

21. Ereren, of course, did not want the jury to hear the full story of the reasons for his declining medical practice, and he filed motions in limine prior to trial to preclude evidence of his gambling losses, bankruptcy and conflicting financial records. (R. at 973-975.)

22. Judge Livingston heard extensive argument on the motions in limine and determined to allow the evidence in under Rule 402, Utah Rules of Evidence, for its relevance to Ereren's damage claims. (R. at 1410, pp.1-123; R. at 1411, p. 10.)

23. At Ereren's request, the Court assured through jury voir dire, that none of the jurors seated on the jury had any bias toward persons who engaged in gambling or filed bankruptcy. (R. at 1411, pp. 123-127.)

24. At trial, the jury heard credible testimony from Snowbird witnesses who denied that an accident such as described by Ereren ever happened. (R. at 1411, pp. 261-262; R. at 1412, pp. 322-323; R. at 1412, p. 333, 343-344, 355; R. at 1412, p. 377, 396.)

25. Ereren attempted to bring in an undisclosed lay witness halfway through trial, allegedly to testify that he had seen people jump in the area of the alleged accident, and to "rebut" "surprise" testimony of Snowbird witnesses, to the

effect that the area was not known as a site for frequent jumping. (R. at 1412, pp. 404-405, 407.) The testimony of the Snowbird witnesses was not surprise testimony. In fact, it was entirely consistent with prior deposition testimony by the same witnesses, and certainly should have been anticipated by Ereren. (R. at 1416, p. 89; R. at 1417, p. 59; R. at 1419, pp. 45-46; R. at 1418, pp. 54-55.) Judge Livingston precluded Ereren's undisclosed "rebuttal" witness from testifying. (R. at 1412, pp. 412-413.)

26. After due deliberation, the jury returned a special verdict, finding that Ereren failed to meet his burden of proof to establish that the accident he described even occurred. (R. at 1257-1259.)

27. Ereren filed a Motion for New Trial. (R. at 1278-1279.) After briefing, Judge Livingston denied Ereren's Motion. (R. at 1384-1385.)

SUMMARY OF ARGUMENT

Plaintiff Erkan Ereren filed this claim in December 1998 for injuries he allegedly incurred in a ski accident in March 1995. Snowbird was unaware of any such accident and Ereren refused to specify the date of the accident, the identities of any witnesses or even the location of the alleged accident. As discovery proceeded, Ereren changed the alleged date of the accident, and the location of the accident. When Snowbird produced the only ski instructors who could match Ereren's descriptions, Ereren denied either of these ski instructors taught his class, apparently because their testimony regarding the impossibility of the accident was too credible.

Ereren fails to meet his burden of establishing that the trial court abused it discretion in denying his Motion to Compel Discovery. The interrogatories and document requests at issue were clearly overly broad and unduly burdensome. Snowbird, moreover, produced every document in its possession containing the name "Ereren" and all documents regarding the ski school classes from the two different days Ereren alleged the accident occurred. Ereren also had the opportunity to depose Snowbird management personnel and the only two blonde, female ski instructors (as described by Ereren) who taught the level of ski class matching his ability on the dates he identified. The denial of Ereren's Motion to Compel was not arbitrary and capricious, and clearly was within the Court's sound discretion.

Ereren claimed that he had a lucrative and successful private medical practice until it was destroyed by the neck injury he allegedly received in the ski accident. Accordingly, it was well within the Court's discretion to allow Snowbird to present evidence that Ereren's practice was in fact spiraling downward even prior to the date of the alleged accident due to Ereren's poor business management, which included obtaining large practice loans, and then gambling away the loan proceeds in Las Vegas. The conflicting financial statements and bankruptcy filing all evidenced the fact that Ereren's business was failing for other reasons long before the alleged ski accident.

Ereren also fails to demonstrate that the evidence Snowbird introduced to refute his damage claims had any prejudicial effect on the jury's special verdict finding that Ereren failed to prove the alleged accident ever occurred. Although Ereren fails to marshal any evidence to support his argument, even a cursory review of the evidence shows Ereren

repeatedly changed his testimony regarding the most basic facts of the alleged accident, lied about not having made other previous claims of neck pain, and lied about the causes of damage to his medical practice. Snowbird ski instructors, moreover, gave credible testimony that the accident described by Ereren did not happen. Thus, the evidence supporting the jury's verdict was overwhelming, regardless of the damage evidence relating to Ereren's gambling losses, financial statement and bankruptcy.

At Ereren's request, the Court further assured that there would be no prejudicial effect from the gambling and bankruptcy evidence by questioning all of the prospective jurors about these topics. Ereren was allowed to exclude for cause any of the jurors who would have been biased by such evidence. Because Ereren fails to establish both a clear abuse of discretion and harm, the trial court's rulings on the damage evidence must be affirmed.

Finally, Ereren fails to demonstrate that the trial court abused its discretion in denying Ereren's request during trial to present a previously undisclosed lay witness to offer opinion testimony about whether the area where the accident allegedly occurred was where he had observed ski jumping on occasion. Ereren proffered this testimony to "rebut" "surprise" testimony from Snowbird witnesses that the area of the alleged accident was not known for frequent jumping. The record, however, clearly shows that the issue of whether this area was a dangerous jumping location was raised in Ereren's own Amended Complaint, early in the litigation, and the Snowbird witnesses' testimony was not "surprise"

testimony. They testified consistently with their prior deposition testimony. Ereren reasonably should have anticipated this testimony at trial.

Because Ereren fails to demonstrate any clear abuse of discretion by the trial court, his request on appeal for a new trial must be denied, and the jury's verdict affirmed.

ARGUMENT

POINT I

THE COURT'S DENIAL OF ERERENS'S MOTION TO COMPEL WAS WITHIN ITS DISCRETION AND PROVIDES NO BASIS FOR OVERTURNING THE JURY'S VERDICT.

It is well established that a trial court's ruling on a motion to compel is reviewed on appeal under an abuse of discretion standard. Archuleta v. Hughes, 969 P.2d 409, 414 (Utah 1998). A trial court abuses its discretion if there is "no reasonable basis for the decision." Crookston v. Fire Ins. Exch., 860 P.2d 937, 938 (Utah 1993). A trial court's ruling will be overturned only if it "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." Kunzler v. O'Dell, 855 P.2d 270, 275 (Utah Ct. App. 1993). Ereren, as appellant, falls far short of demonstrating an abuse of discretion in the trial court's denial of his Motion to Compel.

The issue presented here is very similar to the denial of a motion to compel reviewed by the Court of Appeals in Pack v. Case, 2001 UT App. 232, 30 P.3d 436, which involved breach of contractual warranty on roofing work. The defendant had served interrogatories requesting identification of all persons who had worked at the subject house. The plaintiff objected on the grounds that the interrogatories were overly broad and unduly burdensome.

The trial court agreed and denied defendant's Motion to Compel. Defendant lost at trial and appealed on several issues, including the denial of the Motion to Compel.

The Court of Appeals first noted that whether the trial court had abused its discretion in denying the Motion to Compel did not matter because before trial the defendant had the opportunity to depose the homeowner and ask about the identity of any important witnesses. The Court stated that if this were not satisfactory, the defendant should have renewed his Motion to Compel. Id. at ¶ 14. The Court nonetheless addressed the abuse of discretion issue and concluded:

> [I]t was well within the trial court's discretion to deny Case's motion to compel Pack to provide the names of all the persons who participated in the construction of Pack's house. Such a request is overly broad and unduly burdensome because many workers participated in the construction of the house. Moreover, the majority of the workers involved in the construction of the house would not have set foot upon the roof of the house and would not have any knowledge of the work conducted on the roof. Therefore these employees could not have provided information relevant to the case.

Id. at ¶ 31 (emphasis added).

In the present case, Ereren's discovery was objectionable for the very same reasons identified and upheld by the Court of Appeal in Pack. It was overly broad and unduly burdensome. Moreover, after his Motion to Compel was denied in March of 2000, Ereren deposed six Snowbird employees, including the Director of Mountain Operations (Bob Black) and the Ski School Director (Steve Bills). He had full opportunity to ask these witnesses for information regarding any potentially relevant witnesses and documents, and

he chose not to renew his Motion to Compel.[1] Thus, Ereren's claim of error fails both substantively and procedurally.

A. Interrogatory No. 12 of Plaintiff's First Set of Interrogatories.

In this Interrogatory, Ereren requested identification and information about every ski instructor employed by Snowbird on March 8, 1995.[2] Ereren contends this information was necessary for him to identify the ski instructor who taught his class on the day of the accident.

First of all, this Interrogatory is clearly irrelevant and not calculated to lead to the discovery of admissible evidence for the reason that Ereren alleged and later testified under oath at trial that the accident occurred on March 9, 1995. Thus, the identity of instructors employed as of March 8, 1995, is meaningless. Secondly, the Interrogatory is not reasonably limited in scope. It is not limited to instructors who actually taught classes on March 9, 1995. And, it is not limited to blonde female instructors. Dr. Ereren plainly testified, both at deposition and at trial, that his instructor was blonde and female. (R. at 1415, p. 28; R. at 1413, p. 488.)

---

[1] In fact, Judge Wilkinson, who ruled on Ereren's only motion to compel, had retired and been replaced by Judge Livingston a month prior to the trial. Still, Ereren made no attempt to convince Judge Livingston to order production of any further information or documents prior to trial.

[2] Interrogatory No. 12: Identify by name, address, and telephone number, every ski instructor working in your employ as of March 8, 1995, and state for each such person whether that person conducted any group ski lessons at the Snowbird ski area on that day. (R. at 55.)

Ereren's argument also ignores the fact that Snowbird produced logs for both March 8 and March 9, 1995, showing all of the classes taught on these days, the number of students per class and the names of the instructors who taught.[3] While Ereren argues in his Brief that the logs were not necessarily accurate, Mr. Bills, the ski school director who kept the logs, testified at trial that the logs were accurate and that it was not possible for an instructor to teach a class and not be listed on the log for that day. (R. at 1412, pp. 374, 391.) That testimony was undisputed.

During the 1994-95 season, Snowbird employed approximately 230 ski instructors. (R. at 1417, p. 19.) Ereren's request for details on all of these instructors was plainly overly broad and unduly burdensome, given the parameters of the case established by Ereren's own allegations and testimony. Snowbird provided all available information on the identities of the instructors who taught ski classes on the day of, and the day before, the alleged accident.

B. Interrogatory No. 14 of Plaintiff's First Set of Interrogatories.

This Interrogatory requesting information on every person who took a ski lesson between March 5 and March 10, 1995, was also overly broad and not reasonably calculated to lead to the discovery of admissible evidence.[4] Ereren claims that his purpose was to

---

[3] See Addendum A hereto listing the logs produced by Snowbird; see also R. at 1411, pp. 225-227, where logs were admitted into evidence.

[4] Interrogatory No. 14: Identify, by name, address, and telephone number, every person who took one or more ski lessons at Snowbird at any time from March 5 through March 10, 1995, and, for each such person, state the type of lesson or lessons taken, the name or names of that person's instructor or instructors, and the date or dates on which such lesson or lessons was or were taken. (R. at 56.)

discover information about "Dr. Scott," a student allegedly in Ereren's ski class on March 9, 1995. Dr. Ereren testified in his deposition that a male physician radiologist from Florida with a first name of "Scott" was in his class and witnessed the accident. (R. at 1415, pp. 32 & 35; R. at 1412, p. 445; R. at 1413, p. 521.) Snowbird did not keep lists of ski school students by name and it produced all ski school records it has for March 9, 1995. (R. at 1411, p. 213-214; R. at 1412, p. 379-380; Addendum A.)

While Ereren now attempts to argue that a "Sales Listing" document showing names of people who purchased ski school tickets on March 9, 1995, was withheld from production, he misrepresents the trial testimony. (Plf's Br. p. 20.) Ereren's counsel fully questioned Snowbird witnesses at trial as to why such a document had not been produced. Mr. Bills speculated that it had been found at one time, but could not later be located. (R. at 1412, pp. 364- 365.) Mr. Black, Director of Mountain Operations, however, clearly testified at trial that Snowbird had searched for the document and could not find it. (R. at 1411, p. 213; R. at 1414, pp. 800-802.) Ereren tries now to argue that it could have been regenerated by computer, but there is no evidence that this six-year old record was still available on computer.

Ironically, it was Ereren who knew the most about the alleged "Scott." He supposedly knew where this radiologist had done his residency, where he was practicing medicine and he knew other physicians who allegedly knew "Dr. Scott." Ereren, however, made no effort at all to locate "Dr. Scott" until 2000 or the end 1999, almost five years after the accident occurred. Even at that point, his efforts were half-hearted. (R. at 1412,

pp. 446-449.) The Snowbird Ski School "Sales Listing" shows names but no phone numbers, addresses or other identifying information. Indeed, even if a document such as this had contained a name with the first name of "Scott," there would be nothing to designate him as the "Scott" whom Dr. Ereren claims to have been skiing with.

Interrogatory No. 14 was clearly objectionable, and Snowbird produced all reasonably responsive information in its possession, in any event.

C. Request No. 18 of Plaintiff's First Request for Production of Documents.

This Interrogatory simply asked for all documents "referenced in your Answers to, and/or pertinent to, any of Plaintiff's First Set of Interrogatories."[5] Other than as discussed above, Ereren fails in his Brief to identify or explain any alleged inadequacy in Snowbird's response to this vague and overly broad request. Indeed, it is impossible for him to meet his burden of showing reversible error without marshaling and showing all the documents and information that were produced by Snowbird. Snowbird, in fact, produced supplemental documents and information informally on a number of occasions.[6]

---

[5] Request for Production No. 18: All documents referenced in your Answers to, and/or pertinent to, any of Plaintiff's First Set of Interrogatories, of even date herewith. (R. at 66.)

[6] See Addendum A hereto.

D. Interrogatory No. 1 of Plaintiff's Second Set of Interrogatories.

In this Interrogatory, Ereren requested Snowbird to provide the names, addresses and phone numbers of all people from Florida who stayed at Snowbird any time between March 1 and 10 of 1995.[7] This too was clearly overly broad, unduly burdensome and not calculated to lead to the discovery of admissible evidence. Moreover, it presented invasion of privacy concerns for Snowbird's many guests. As Snowbird argued to the trial Court, even assuming such five-year old lodging information existed, Snowbird could not justify allowing Ereren's counsel to contact and grill all of Snowbird's lodging guests from the State of Florida. (R. at 84-85.)

Ereren claims he needed this information to locate the alleged "Dr. Scott." The Interrogatory, however, was not reasonably tailored even for this purpose. If Dr. Ereren skied with "Dr. Scott" on March 9, 1995, as he alleged, why would he need Snowbird to produce records for all lodging guests for dates earlier than March 8? Significantly, Ereren never modified or attempted to narrow his request to address this defect. This request was invasive, overly broad and not reasonably calculated to lead to discovery of admissible evidence.

E. Interrogatory No. 2 of Plaintiff's Second Set of Interrogatories.

This Interrogatory requested Snowbird to check seminar attendee records and identify all people staying at Snowbird between March 1 and March 10, 1995, and thought

---

[7] Interrogatory No. 1: State the name and address and phone number, as of that time, of every person who gave a Florida address and who stayed at the Cliff Lodge and/or any other facility operated by you at any time between March 1 and March 10, 1995. (R. at 61.)

to be physicians.[8] It was objectionable for the same reasons as the preceding Interrogatory. Furthermore, Snowbird informed Ereren's counsel that Snowbird did not have seminar attendee records.[9] Ereren argues in his Brief that the information Snowbird provided on medical conferences was "limited and unsatisfactory." (Plf's Br. p. 18). He conveniently ignores the fact that Snowbird gave him all the records and information it had on March 1995 medical conferences and expressly informed Ereren's counsel of that. This information was provided with two letters from defense counsel in November 2000. (See letters from Snowbird counsel to plaintiff's counsel dated November 6 and November 15, 2000, Addendum B hereto.)

By the time Ereren filed his Motion to Compel, Snowbird had produced every document it could find with the "Ereren" name on it. Snowbird produced every document it could reasonably locate naming Ereren, the ski instructors and students participating in ski school classes on March 8 and 9, 1995. The fact that the trial court did not order Snowbird to go to extraordinary lengths, compromising the privacy of guests, or to fish for some speculative piece of information, does not establish an abuse of discretion or any reason justifying vacating the jury's verdict.

---

[8] Interrogatory No. 2: State the name and address and phone number as of that time of every person who you have reason to think, from seminar attendee records, registration records, and/or otherwise, was a physician and who stayed at the Cliff Lodge and/or other lodging facility operated by you at any time between March 1 and March 10, 1995. (R. at 61.)

[9] See letter from Snowbird counsel to plaintiff's counsel dated November 6, 2000, Addendum B hereto.

Finally, all of Dr. Ereren's arguments regarding the alleged "Dr. Scott" are precariously stacked on a series of very speculative assumptions including: a) that "Dr. Scott" exists; b) that having his full name would enable him to be located despite the failure of all of Dr. Ereren's efforts and contacts; c) that he witnessed anything of probative value to the case; d) that he could remember anything he may have witnessed six years earlier; and e) that he would cooperate in providing any information.

POINT II

ERENEN FAILS TO DEMONSTRATE THAT THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING SNOWBIRD TO PRESENT EVIDENCE OF INCONSISTENT FINANCIAL RECORDS, GAMBLING LOSSES AND DEBTS, AND BANKRUPTCY TO REFUTE ERENEN'S CLAIMS FOR THE LOSS OF A FINANCIALLY VIABLE AND GROWING MEDICAL PRACTICE.

Ereren challenges on appeal the trial court's determination to admit certain evidence directly pertaining to his past financial condition and records. Though admissibility of evidence is a legal question, "the trial court has a great deal of discretion in determining whether to admit or exclude evidence, and its ruling will not be overturned unless there is an abuse of discretion." Gorostieta v. Parkinson, 2000 UT 99, ¶ 14, 17 P.3d 1110. Even if an appellant is able to overcome the very high standard of demonstrating an abuse of discretion on a decision to admit evidence, he must further demonstrate that the abuse of discretion was harmful in its impact on the verdict. "Under Utah law, an erroneous decision to admit or exclude evidence does not constitute reversible error unless the error is harmful." Jones v. Cyprus Plateau Mining Corp., 944 P.2d 357, 360 (Utah 1997).

"Harmful error occurs where the likelihood of a different outcome in the absence of the error is sufficiently high so as to undermine confidence in the verdict." Id. Not only does Ereren fail to demonstrate any abuse of discretion in Judge Livingston's evidentiary rulings, but he fails to show that there was any probability of a different verdict if the evidence had been excluded. Accordingly, the verdict must be affirmed. Id. at 360-361.

A. Ereren Fails to Demonstrate Any Abuse of Discretion.

Ereren claimed at trial that he had a very successful and growing practice as a general surgeon in southern California until he was injured at Snowbird. (R. 1411, p. 167). He claimed that his practice income decreased as a sole result of his injury.[10]

Ereren's counsel, in his opening statement, presented gross income figures from the medical practice for 1988 through 1999 and argued that Ereren "had the world by its tail" in terms of his medical practice income in 1992 and 1993. (R. at 1411, p. 189). Ereren claimed that the past gross income figures from his practice were evidence of past lost income and indicative of the magnitude of his lost future earning capacity. (R. at 1411, p. 190).

While Snowbird's case was certainly, and understandably, focused on the liability part of the case, Snowbird did put on a damage defense. Snowbird's defense was essentially that Ereren's presentation of past gross income figures from his practice was a misleading attempt to inflate damages and failed to tell the tale of the actual declining financial

---

[10] Ereren's medical practice was operated as a sole proprietorship or dba of Ereren, not as a separate legal entity, and Ereren commingled his personal and practice funds. (R. at 1415, pp. 8-9; R. at 1414, p. 760.)

condition of Ereren's practice prior to the date of the alleged ski accident. The fact that he misrepresented and overstated his economic condition was supported in part by evidence that he had prepared two sets of financial statements: one for the purpose of obtaining a $500,000 loan for his practice; and the other, for internal bookkeeping purposes showing a much less robust practice. (R. at 1414, pp. 749-753.)

Further evidence showed that once Ereren obtained the loan for his practice, he actually took the money to Las Vegas and lost it gambling. (R. at 1413, pp. 526 -532.) In addition to losing vast amounts of practice funds gambling, Ereren had incurred substantial legal expenses in a lawsuit with a California Hospital. After Ereren sued the hospital, claiming that it had breached oral and written contracts, the hospital countersued against him for defaulting on another substantial practice loan. (R. at 1413, pp. 526, 530, 534.) In the course of that litigation, Ereren alleged that the hospital, long before his March 1995 trip to Snowbird, had caused him to suffer neck pain, headaches, stress, and caused him to lose a large percentage of his surgery referrals, all resulting in a financially devastating decline in his practice income. (R. at 1413, pp. 534, 537, 539-540, 544. 547.) Ereren's consequent inability to pay back his practice debts, loan interest and attorneys fees, caused him to file for bankruptcy in 1997. (R. at 1415, pp. 3-4; R. at 1414, p. 754.) All of these facts went directly to refute Ereren's claim that he "had the world by its tail" in terms of the financial health and viability of his medical practice, prior to the alleged ski accident.

It is understandable that Ereren's counsel attempted to sanitize the true and complete picture of his client by objecting to parts of Snowbird's damage defense. However, the fact

that some of the evidence reflected poorly on Ereren's overall credibility did not make it inadmissible. Indeed, it would clearly have been improper for the court to deprive Snowbird of its opportunity to put on evidence refuting the plaintiff's damages claims just because the evidence was also detrimental to Ereren's credibility and overall case.[11]

1. Conflicting Financial Statements.

Although Ereren attempts to characterize the admission of evidence of his conflicting financial statements as a Rule 608 issue, it was in fact a Rule 402 issue. Rule 608 pertains to extrinsic evidence of character or specific instances of conduct introduced solely for the purpose of impeaching a witness's credibility. If the evidence was properly admitted under Rule 402 as relevant to Ereren's damage claims, admissibility under Rule 608 is irrelevant.

Contrary to Ereren's argument, the financial statements were introduced into evidence based on their relevance and probative value regarding Ereren's true financial picture. (R. at 1414, pp. 730 and 735-736.) Snowbird never attempted to introduce this evidence under Rule 608. Its relevance to Ereren's damage claims is a Rule 402 question, and any issue plaintiff raised as to unfair prejudice was a Rule 403 issue. Furthermore, it is apparent from the Trial Transcript that Judge Livingston also admitted this evidence under Rule 402 based on the its apparent relevance to the financial condition of Ereren's medical practice prior to the alleged ski injury, not for the purpose of impeaching or attacking Ereren's character. (R. at 1414, pp. 726-727 and 730-731.)

---

[11] See Judge Livingston's statements explaining the basis of his ruling, R. at 1414, pp. 726-727, 730-731 and 735.

Plaintiff appears to complain that it was improper for counsel to use admissible testimony on the damages issue to also impeach plaintiff's credibility. Plaintiff assumes that evidence, once admitted, can only be argued for a single purpose. It is true that by the time he made his closing argument, Snowbird's counsel had made a strategic decision to focus his argument on the liability case and not waste his limited time discussing damages. Part of the reason for this was to hopefully project an impression of confidence in the defense of the liability case and to convey the expectation that the jury would not reach the damages case in its deliberations. Certainly, the decision to avoid discussion of damages in closing argument does not retroactively render inadmissible evidence which was otherwise admitted as relevant to the defense on damages.

The term "relevant evidence" is used to describe "evidence that has any tendency to prove or disprove the existence of any material fact." State v. Colwell, 2000 UT 8, ¶ 27, 994 P.2d 177 (emphasis added). See also Utah R.Evid. 401. "Under Utah Rule of Evidence 401, any evidence that is slightly probative in value is relevant." Colwell, 2000 UT 8 at ¶ 27 (emphasis added). In other words, to be irrelevant, evidence must have no probative value. If there is any probative value, the evidence is both relevant and admissible. Utah R.Evid. 401 & 402.

Relevant evidence "may" be excluded if its probative value is substantially outweighed by danger of prejudice, confusion of issues, or misleading the jury. Utah R.Evid. 403 (emphasis added). Rule 403 does not require the exclusion of such evidence, but merely gives the Court discretion to do so if the threshold is met.

As discussed above, Ereren's counsel argued that Ereren had a viable, growing medical practice until it was ruined by his alleged ski injury. His economist, Dr. Randle, further testified to substantial damage figures which he calculated based on projections from averaging Ereren's past medical practice income, from 1989 through 1994, and assuming that his practice would have continued as a viable source of income into the future. (R. at 1413, pp. 682-683.) He also testified that he had analyzed Ereren's business expenses and determined that they were relatively fixed. (R. at 1413, p. 681.) Dr. Randle, however, failed to consider as "expenses" the unpaid principal and interest on Ereren's practice loans and the general decline in his practice that had commenced long before March 1995. (R. at 1413, p. 681). Dr. Randle did admit that for a physician in private practice to be economically successful, he must also be a good businessman. (R. at 1413, p. 704.)

Snowbird presented its own economist, Mr. Hoffman, to refute Ereren's damage claims and the testimony of Dr. Randle. Mr. Hoffman reviewed Ereren's financial records including tax returns, profit and loss statements, and financial statements, among other documents. (R. at 1414, p. 742.) He testified that these were the type of documents, which he, as a CPA, typically reviews in evaluating the viability of a business such as Ereren's medical practice. (R. at 1414, pp. 742-743.) Like Dr. Randle, Mr. Hoffman looked at business expenses, but he concluded that the documents reflected a significant increasing trend in interest expenses, not fixed expenses as Dr. Randle testified. (R. at 1414, p. 745.) Mr. Hoffman investigated the interest expenses further by reviewing the loan documentation from Ereren's business and the financial statements. He concluded

from these statements that the business was borrowing substantial funds that were not being put into the business, and the business was accordingly declining under its debt burden. (R. at 1414, p. 755.) It was an integral part of Mr. Hoffman's testimony to review Ereren's financial statements, whether they conflicted or not, and to explain which information he used in his analysis. (R. at 1414, p. 751-755.)

The financial statements were plainly relevant in light of the argument of Ereren's counsel and the testimony of Dr. Randle. The fact that they also revealed inconsistencies or unreliability of Ereren's financial documentation and reporting, did not make the evidence inadmissible.

2. Gambling Losses.

Ereren challenges Judge Livingston's admission of the evidence of Ereren's gambling only on the grounds of Rules 402 and 403. The probative value of Ereren's gambling losses is apparent, however, when one considers plaintiff's argument that gross business profits reflected a viable business, expected to continue into the future, but for his ski injury. (R. at 1411, pp. 188-192.)

What made Dr. Ereren's gambling relevant to his damage claims was the frequency and amount of his losses, the sources of his gambling funds, and the fact that he apparently gambled away funds loaned to him expressly for business purposes. The causation issue for the jury was whether the alleged accident caused the failure of Dr. Ereren's surgical practice and resulted in financial ruin. Evidence of another cause, especially one which is as pronounced as demonstrated by Dr. Ereren's gambling history, was relevant to and highly

probative of the causation question and bears materially on the overall damage issue. Certainly, a businessman who invests his business loan proceeds by gambling in Las Vegas is not a "good businessman," particularly where he loses all of the loan proceeds and is then unable to make the loan payments. Such a business does not have a bright future.

The First Circuit addressed the issue of whether evidence of gambling was admissible under Rule 403 in a personal injury trial in Dente v. Riddell, Inc., 664 F.2d 1 (1st Cir. 1981). In Dente, the plaintiff alleged that his social life had been ruined by the defendant's negligence. The appellate court upheld the trial court's admission of evidence of gambling as demonstrating that the injury did not exist. In the process, the court observed that Federal Rule of Evidence 403, identical to the Utah rule, gives the court discretion to admit the evidence even if its probative value is substantially outweighed by the potential for prejudice. Id. at 5. The court held that the gambling evidence "was germane to the cause of Dente's physical and mental condition--a central and hotly contested issue." Id. Approving the trial court's decision to "put everything on the table, in full view of those responsible for deciding this case," the court noted that "the balance should be struck in favor of admission." Id. at 6.

There can be no question that Ereren's huge gambling losses of business loan funds were relevant to the financial condition of his medical practice.[12] This leaves only the question of whether its probative value is outweighed by unfair prejudice.

---

[12] R. at 1413, p. 530; R. at 1414, p. 754-755.

Ereren failed to make any showing of such prejudice. Instead, he simply asked the court to assume that evidence of Las Vegas gambling is unfairly prejudicial. It is well known, however, that gambling such as that done by Ereren in Las Vegas is entirely legal and a very popular pastime for a great many Americans. Indeed, Snowbird's counsel himself admitted to the jury that he had been known to gamble on occasion as well. (R. at 1411, pp. 202-203.)

At Ereren's request, the Court asked on jury voir dire whether any of the prospective jurors had personal feelings about gambling which would detract from their ability to be fair and impartial. (R. at 1411, pp. 124-125.) Only one of the prospective jurors indicated that it would be a problem, and that person did not serve on the jury.[13] The others indicated that they held no strong feelings about gamblers or gambling that would affect their impartiality. (R. at 1411, p. 124.) Having asked the Court to cover this issue on voir dire, Ereren cannot now contend that the jury panel was dishonest and was prejudiced by the very type of evidence they indicated would not affect their impartiality.[14]

Evidence of Ereren's gambling did not pose any significant threat of unfair prejudice, and the jury voir dire confirms that.

---

[13] In response to Ereren's requested voir dire regarding gambling, Ms. Hansen indicated that she could not be impartial. (R. at 1411, p. 125.) She did not serve on the jury. (See R. at 1094.)

[14] Snowbird points this out as an indication of lack of prejudice. It is, however, clearly Ereren's burden to demonstrate prejudice, and he has failed to make any effort to do so.

3. Bankruptcy.

As with his argument pertaining to gambling, Ereren challenges the admission of evidence of his bankruptcy under Rules 402 and 403. (Plf's Br. pp. 25-26.) The issues are the same as with the gambling evidence, and in fact the gambling and bankruptcy records are necessarily intertwined. As pointed out in Snowbird's cross-examination of Ereren, he had large gambling debts which were apparently discharged in bankruptcy. (R. at 1413, pp. 530-532.) These records related directly to the conflicting financial pictures painted by Ereren and Snowbird, and lent support to the analysis of Mr. Hoffman and his opinion that gambling losses of business funds and excessive debt, rather than any ski injury, were direct causes of the significant decline in Ereren's medical practice.

As with his argument regarding gambling, Ereren asked the Court to simply assume that evidence of bankruptcy was per se unfairly prejudicial, so as to outweigh the probative value. Bankruptcy proceedings however, simply provide a perfectly legal avenue for people who cannot pay their bills to obtain relief from their debts. Evidence of bankruptcy is no more prejudicial than evidence of an inability to pay one's debts. While this evidence might well have been prejudicial to Ereren's damage case--and certainly Snowbird hoped it would be--there was nothing to indicate unfair prejudice. For example, Snowbird never argued that Ereren was untrustworthy because he had filed bankruptcy.

Finally, the effect of evidence of bankruptcy was also part of Ereren's requested voir dire to the jury, with the same result. Judge Livingston gave a cautionary instruction as to

the bankruptcy evidence and none of the jurors selected to serve at trial felt that evidence of bankruptcy would affect their impartiality. (R. at 1411, pp. 126-127.)

Evidence of Ereren's bankruptcy did not pose any significant threat of unfair prejudice, and again, the cautionary instruction of the Court and the jury voir dire assured that.

B. Ereren Fails to Establish That the Court's Ruling Was Harmful.

Ereren is obligated under Utah law to establish that these rulings affected the outcome of the jury's verdict. Jones v. Cyprus Plateau Mining Corp., 944 P.2d 357, 360 (Utah 1997). To do so, he must essentially marshal all of the other evidence supporting the verdict and demonstrate that all of the other evidence is not enough to maintain confidence in the jury's verdict. Ereren's Brief offers nothing beyond a couple of conclusory statements to establish that Judge Livingston's evidentiary rulings were harmful. (Plf's Br. pp. 25-26.)

In its Special Verdict, the jury found that Ereren failed to prove that the accident he described occurred. (R. at 1257-1259.) This was not at all surprising. There were many substantial reasons for the jury to doubt Ereren's credibility that had nothing to do with bankruptcy, gambling, or conflicting financial statements.

The following are just some of the examples of the abundant evidence at trial which caused the jury to reject Ereren's story.

a. Ereren first claimed that the accident took place on March 8, 1995, (R. at 1-6). Then, at his deposition, he changed it to March 9, 1995. (R. at 1415,

pp. 27-28.) Even so, he never notified Snowbird of the alleged accident until years later. (R. at 1415, pp. 52-54.)

b. Ereren could not identify a single witness to the accident other than the elusive "Dr. Scott" who has never been located. (R. at 1415, pp., 34-36.)

c. Collisions involving Snowbird ski school participants are always reported by the class instructor, yet there is no record of any accident involving Ereren. (R. at 1417, pp. 46-48, 53; R. at 1416, pp. 48-50; R. at 1411, pp. 174-175.)

d. Ereren changed his testimony during the litigation as to the location of the alleged accident. (R. at 1415, pp. 40-42; R. at 717-720; R. at 1413, pp. 501-502, 505-506.)

e. The location which Ereren identified was not in an area where beginning or immediate ski classes were taught. (R. at 1412, pp. 321-322, 353-354, 399.)

f. The location Ereren identified was not one in which skiers or boarders frequently jumped. (R. at 1416, p. 89; R. at 1417, p. 59; R. at 1419, pp. 45-46; R. at 1418, pp. 54-55.) Nor was it one where there were line of sight problems. (R. at 1416, p. 89; R. at 1417, pp. 59-60, 64-66; R. at 1418, pp. 54, 59-60.)

g. According to Ereren's testimony, he was forcefully struck in the head and neck and knocked down the hill by a phantom snowboarder. (R. at 1412, p. 461.) Ereren got up, dusted himself off and skied the rest of the way down the

mountain. (R. at 1412, p. 464; R. at 1413, p. 511.) To do so from the location of the alleged accident, Ereren would have had to ski down a "black diamond" (most difficult) mogul run, as a beginning skier in a dazed, injured condition. (R. at 1411, p. 267.)

h. Despite his claim that he had been severely injured in the alleged accident at Snowbird, Ereren took his young family back to Snowbird the following year for another ski vacation. (R. at 1413, pp. 519-521.)

i. The only female Snowbird ski instructors who taught classes on March 9, 1995, of the size and level described by Ereren, testified unequivocally and credibly that they would have remembered any such accident and it did not occur in their classes. (R. at 1412, pp. 320, 322-323, 343-344, 351, 355-356.)

j. Ereren testified falsely at trial that, prior to his ski injury, he had never before had any significant neck pain or injury affecting his ability to work. (R. at 1413, p. 517.) In fact, in 1994 Ereren had filed pleadings in a California lawsuit in which he claimed injuries in the form of headaches, neck pain, fatigue, and stress. He alleged that his injuries had been caused by the defendant hospital and he sought millions of dollars in damages. (R. at 1413, pp. 534-537.) He continued to pursue those claims against the hospital defendant in December 1995 even after his alleged injury at Snowbird, and he never revealed his alleged ski injury to the defendant in his California lawsuit. (R. at 1413, pp. 517-548.)

k. Ereren had also included in his 1994 lawsuit against the California hospital claims for loss of his medical practice business. He claimed that he was working 30 to 40 percent less in 1993 as a result of wrongful conduct of the hospital. (R. at 1413, pp. 544-547.)

l. Although his wife was identified in pretrial documents as a trial[15] witness and was with him during his March 1995 ski vacation, she never appeared at trial to verify or support his allegations of injury on March 9, 1995, or to testify about his symptoms during the ensuing years. (R. at 1414, pp. 2-5, 847.)

The above are just some of the examples of the overwhelming evidence at trial which gave the jury reason to disbelieve Ereren's uncorroborated tale and to find that he failed to meet his burden of establishing that the alleged accident even occurred. This, of course, does not even take into account the invaluable opportunity the jury had to observe Ereren's evasive demeanor while testifying.

Ereren has made no effort to satisfy his burden of demonstrating the probability of a different verdict if Judge Livingston had excluded evidence of Ereren's bankruptcy, Las Vegas gambling, and conflicting financial statements. The evidence on these issues was insignificant in comparison to the all of the other overwhelming evidence which understandably served to destroy Ereren's credibility with the jury.

---

[15] R. at 181-185.

POINT III

ERENEN FAILS TO MEET HIS BURDEN OF SHOWING THAT JUDGE LIVINGSTON CLEARLY ABUSED HIS DISCRETION IN EXCLUDING TESTIMONY FROM ERENEN'S SURPRISE "REBUTTAL" WITNESS AT TRIAL.

Ereren's fourth argument on appeal is that Judge Livingston abused his discretion in precluding plaintiff from calling a surprise "rebuttal" witness, not disclosed[16] until midway through the trial. He argues that this witness should have been allowed to testify to "rebut" testimony of Snowbird witnesses to the effect that the area of the alleged accident was not known to be one in which skiers frequently jumped. Ereren argues that he and his counsel were "surprised" by this "new testimony," alleging it to be false.

Mr. Collins, Ereren's counsel, argued to Judge Livingston that he had talked to a lawyer friend the night of the first trial day and discovered that this friend had skied at Snowbird in 1995. He proffered that this friend, Mr. Gilchrist, would testify that the area of the accident was "very frequently used for jumping." (R. at 1412, pp. 404-406.) Snowbird opposed admission of any testimony by this surprise witness and argued that the proffered testimony would be inadmissable opinion testimony from a lay witness and was not in fact legitimate rebuttal testimony, as there was no basis for Ereren to claim surprise at

---

[16] The Court's Scheduling Order required plaintiff to designate all fact and expert witnesses by July 28, 2000. (R. at 162.) Plaintiff did not identify Mr. Gilchrist in his Designation or later supplemental designations. (See R. at 181, 491 and 494.)

the testimony of Snowbird witnesses. (R. at 1412, pp. 404-410.) Judge Livingston agreed and excluded Mr. Gilchrist from testifying.[17] (R. at 1412, pp. 412-414.)

Ereren fails in his Brief to cite any legal authority at all in support of this argument that Judge Livingston clearly abused his discretion. This is not surprising, given that both the record and controlling case law solidly support the ruling.

This case is very similar to the case of Turner v. Nelson, 872 P.2d 1021 (Utah 1994), in which the Utah Supreme Court upheld a trial court's exclusion of a plaintiff's proffered rebuttal witness not disclosed prior to trial. In that case, the plaintiff's counsel claimed she was surprised by defendant's argument during the first day of trial that a stop sign had been partially obscured by foliage and that the accident was not defendant's fault. Plaintiff's counsel went out on the evening of the first trial day and located a witness living in the area of the intersection who would purportedly testify that the stop sign was not obscured at the time of the accident. On the morning of the second day of trial, plaintiff's counsel moved the court to allow the newly found witness to testify as a "rebuttal" witness. Id. at 1023. The trial court denied the plaintiff's motion on the grounds that the witness had not been previously disclosed and that defendant's witness testimony regarding obstruction of the sign could reasonably have been anticipated by the plaintiff. Id.

> It is well within a trial Court's discretion to order the parties to disclose all potential witnesses prior to trial.... [A] trial court does not abuse its discretion by refusing to allow a party to call a surprise witness absent "good cause" for the failure to disclose

---

[17] Judge Livingston also noted that Mr. Collins stated that Dr. Ereren himself would testify that he had later observed the area of the accident to be one where skiers or boarders frequently jumped. (R. at 1414, pp. 409-410 and 413.)

> the witness as required by a court order or rule. When the offering party contends that the undisclosed witness is necessary to rebut the adverse party's evidence, the issue hinges on whether the evidence "sought to be rebutted could reasonably have been anticipated prior to trial."

Id. at 1024.

As the appellant, Ereren "has the burden of showing that the trial court erred in determining that the "new testimony" could have been anticipated." Id. To meet his burden, Ereren "must provide the Court with a complete record of all the evidence relevant to the alleged error." Id. Like the plaintiff in Turner, Ereren has failed to provide the Court any citations to the extensive deposition testimony of Snowbird employees, and other evidence relating to the issue of whether the area of the alleged accident was an area known for frequent jumping. Without marshaling this evidence, plaintiff cannot carry his burden of demonstrating that the testimony of Snowbird witnesses at trial was new or "could not have been reasonably anticipated." Id.

Ereren claims surprise at the "new testimony" at trial of Snowbird employees Black and Durtschi that "the area described by Dr. Ereren is one where skiers and snowboarders infrequently, if ever, jump." (Plf's Br. p. 27.) Even a cursory examination of the record, however, demonstrates that the issue of whether a Snowbird instructor negligently placed Ereren in a dangerous area known for jumping was a central issue in the case from the outset, and Snowbird witnesses testified at trial consistently with their prior deposition testimony given six months before trial. The following are just a few examples:

A. Ereren's Amended Complaint ¶¶ 7 and 8:

In paragraph 7 of the Amended Complaint, Ereren alleged that the ski instructor positioned him "at a location defendant knew or should have known was not a safe location." (R. at 24.) In paragraph 8, Ereren alleged that Snowbird was negligent in failing to "prevent skiers and snowboarders from jumping into the location in which plaintiff was positioned." Id.

B. Mr. Black's Deposition:

Q. [Mr. Collins] . . . Have you seen people jumping from above Rothman's way across – excuse me, launching from the downhill edge of Rothman's Way and landing in the area known as Chip's Face on this map and/or the area between Chip's Face and where Rothman's Way intersect's the Peruvian lift line?[18]

A. [Mr. Black] No.

(R. at 1416, p. 89.)

C. Ms. Durtschi's Deposition:

Q. [Mr. Collins] Have you ever seen in any of your time up at Snowbird as an instructor or just free skiing, have you ever seen anybody, ..., anybody become airborne, a skier or a snowboarder coming off of the part of Rothman Way between Phone 3 and where the cat track begins? Have you ever seen anybody getting air off of that?

A. [Ms. Durtschi] They would be an acrobat if they do.

Q. Why do you say that?

A. Because there is no air.

---

[18] Mr. Collins represented during the depositions of Mr. Black and Ms. Durtschi that Ereren's recollection was that somewhere in this large, general area below Rothman Way and in the vicinity of Chip's Face was where the accident occurred. (R. at 1416, p. 17; R. at 1418, p. 60.)

****

Q. And per chance, just talking to ski instructors or people up there, have you ever heard tale of any such thing?

A. No.

(R. at 1418, pp. 54 & 57.)

There can be no doubt that the trial testimony of Mr. Black and Ms. Durtschi that the area of the alleged accident was not known to be an area in which skiers jumped was consistent with their prior deposition testimony. The issue had been raised first in the Amended Complaint and Ereren and his counsel failed to demonstrate that this testimony at trial was either new or not reasonably anticipatable. In fact, it was Ereren's burden to prove his allegations that the area was dangerous because people frequently jumped there. If there was anything new about the testimony, it was due solely to Ereren, prior to trial, changing his own testimony to allege that the accident took place at a different location than he identified in his deposition. If Ereren's counsel asked the witnesses about jumping at the wrong location on the mountain, that is certainly Ereren's own fault. There was nothing inconsistent about the testimony of the Snowbird witnesses. Only Ereren's testimony was different from his deposition.

Judge Livingston's ruling excluding the proffered testimony of Mr. Gilchrist was appropriately within the court's sound discretion.

CONCLUSION

As set forth above, Appellant Ereren has failed to meet his burden on appeal of establishing any abuse of discretion warranting a new trial. Appellee Snowbird respectfully requests that the jury's verdict and the judgment on that verdict be affirmed.

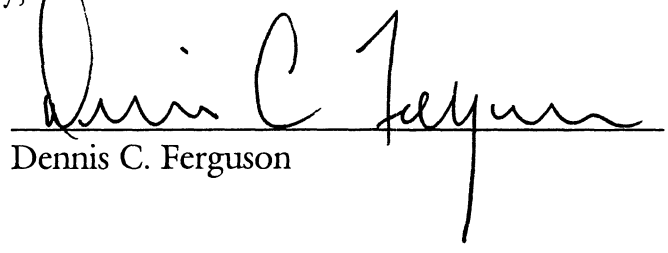
RESPECTFULLY SUBMITTED this 25 day of January, 2002.

WILLIAMS & HUNT

By _____
Dennis C. Ferguson
Kurt M. Frankenburg
Attorneys for Appellee Snowbird Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2002, two (2) true and correct copies of the foregoing **Brief of Appellee Snowbird Corporation** were mailed postage prepaid thereon, by United States first class mail, to Peter C. Collins, Bugden, Collins & Morton, 623 East 2100 South, Salt Lake City, Utah 84106.



Dennis C. Ferguson

93982.1

ADDENDUM A

DOCUMENTS PRODUCED BY DEFENDANT SNOWBIRD

1. 1994-95 Skier's Trail and Safety Guide (R. at 554-555, 1330, 1331)
2. Daily Log for March 8, 1995 (R. at 122, 367)
3. Snowbird Ski Patrol Winter Operations Plan, 1994-95 (R. at 101)
4. Snowbird Ski School Daily Sales Edit Listings (R. at 123-126)
5. Daily Logs for March 5-10, 1995 (R. at 364-379)
6. Daily Log for March 9, 1995 (R. at 368)
7. Snowbird Group Sales - Booking Reports for March 1995 (R. 332-333)
8. Photographs of female ski instructors, 1995 (R. at 106-112)
9. Ski instructors manual (excerpts) (R. at 57, 1319)

* * *

The following documents were produced by Snowbird, either formally in response to document requests or interrogatories, or informally, but are not part of the record.

10. Notes on Weather and Snow Conditions for March 1-10, 1995
11. Mountain Checklists for Grooming, etc. for March 1-10, 1995
12. Health and Safety Guidelines for Snowbird Ski School
13. Camp Snowbird Ski School Records for March 5-10, 1995
14. Mountain Checklists for Grooming, etc. for March 10-12, 1995
15. Tram Announcement for March 9, 1995
16. Project Work Sheet for March 9, 1995
17. Hidden Peak Dispatch Log for March 9, 1995
18. Daily Sweep Sheet (undated)
19. Meteorological Records for March 9, 1995-2000

ADDENDUM B

SELECTED CORRESPONDENCE FROM SNOWBIRD'S COUNSEL TO ERERENS'S COUNSEL REGARDING DISCOVERY ISSUES

1. April 24, 2000, letter from Dennis C. Ferguson to Peter Collins regarding identification of ski instructor

2. May 2, 2000, letter from Dennis C. Ferguson to Peter Collins regarding deposition scheduling and identification of ski instructor

3. June 29, 2000, letter from Dennis C. Ferguson to Peter Collins regarding identification of ski instructor

4. November 6, 2000, letter from Kurt M. Frankenburg to Peter Collins identifying medically related organizations which held conferences at Snowbird in March 1995, and stating that Snowbird does not have records identifying the attendees (R. at 332-333)

5. November 15, 2000, letter from Kurt M. Frankenburg to Peter Collins enclosing all the information Snowbird has regarding associations which held meetings at Snowbird in March 1995

6. November 15, 2000, letter from Kurt M. Frankenburg to Peter Collins stating that Snowbird has responded reasonably to plaintiff's discovery requests with what discoverable information it has

LAW OFFICES OF
WILLIAMS & HUNT
A PROFESSIONAL CORPORATION

257 EAST 200 SOUTH, SUITE 500
P.O. BOX 45678
SALT LAKE CITY, UTAH 84145-5678

ENNIS C. FERGUSON

TELEPHONE (801) 521-5678
FAX (801) 364-4500
E-MAIL dferguson@wilhunt.com

April 24, 2000

Peter C. Collins
BUDGEN, COLLINS & MORTON, L.C.
623 East 2100 South
Salt Lake City, Utah 84106

Re: *Ereren v. Snowbird Corporation*
Our File No.: 1212.0016

Dear Pete:

The name of the ski instructor depicted in photograph 14 and identified by your client as the one who taught the ski school clasess he was in on March 8 and March 9, 1995 is Andrea Martin. As is readily apparent from the daily logs for March 8 and March 9, Andrea was not one of the ski instructors working. Indeed, we have confirmed that she was not working at all at Snowbird during the time in question. Please let me know how you want to proceed at this juncture. Perhaps Dr. Ereren would like to take another stab at identifying the ski instructor. Please remember that the reason that I proceeded in this manner was that Dr. Ereren testified at his deposition that he would be able to recognize the ski instructor from the photograph. If he cannot do so, please let me know that and we will proceed in another manner in an attempt to identify the instructor or instructors who would have taught his class on the 8th and 9th. Indeed, based upon Dr. Ereren's prior testimony, we have narrowed the field. Dr. Ereren has testified that he took a ski school class from the same, blonde ski instructor on the 8th and 9th. Given Dr. Ereren's testimony with regard to his ski level, there are only four women who taught level 2, 3 or 4 classes on both days. There names are listed as "Dumas (first name Georgia), Nancy, Shirley and Gwen." Thus, assuming that Dr. Ereren actually took a ski school class on the 9th, the field of possibilities, given his past testimony is very narrow. At this juncture, however, I would like to know whether Dr. Ereren actually recognizes the ski instructor or not before proceeding with identification of the person or persons whom we believe would have been the ski instructor.

With regard to your request for other information, we still have not been able to find the book that contains the computer printout of daily sales for ski school classes. Please understand, however, that when you initially requested information, we searched all

of our records and made copies of any documents containing the Ereren name. Thus, it is unlikely that there will be a reference to Ereren for March 10 that shows a ski school purchase for March 9. The book that contains the hard copies of these listings has apparently been misplaced during a move and we are still searching for it.

With regard to your request for records from the Cliff Lodge, I believe that issue has been dealt with in our formal discovery responses.

With regard to your reasons for wanting to take depositions of male ski instructors, I have several problems. First, at such time as we can identify the most likely candidate or candidates for the actual ski school instructor, you will have the opportunity to depose her or them. We will make available Steve Bills who is the ski school director and the person who would have been the supervisor of the relevant ski instructors on the dates in question. You have also requested to take the deposition of Bob Black, the Mountain Operations Director. Thus, it appears to me that you will have ample opportunity to ask from these witnesses the questions that you have highlighted in your letter of April 18, 2000. I suggest that we proceed with scheduling the depositions of these people first.

Before scheduling any depositions, however, I need to receive your answers to the outstanding discovery requests, and I want to continue in our effort to identify the ski instructor. If you have a problem in proceeding in that manner, please let me know.

Very truly yours,

WILLIAMS & HUNT

Dennis C. Ferguson

DCF/ple

79776

cc: Bob Black

LAW OFFICES OF
WILLIAMS & HUNT
A PROFESSIONAL CORPORATION

257 EAST 200 SOUTH, SUITE 500
P.O. BOX 45678
SALT LAKE CITY, UTAH 84145-5678

RT M. FRANKENBURG

TELEPHONE (801) 521-5678
FAX (801) 364-4500
E-MAIL kfrankenburg@wilhunt.com

May 2, 2000

Peter C. Collins
BUDGEN, COLLINS & MORTON, L.C.
623 East 2100 South
Salt Lake City, Utah 84106

Re: *Ereren v. Snowbird Corporation*
Our File No.: 1212.0016

Dear Pete:

Thank you for your letter of May 1st. I am enclosing herewith a proposed stipulated schedule.

With regard to depositions, we are available on June 5th and 6th for depositions. We will, of course, have to see who the witnesses are and if they are available on those days. We expect that you will be providing us with your written discovery responses prior to that time, as they are already overdue.

I think that we are all in agreement that we should avoid unnecessary and/or unproductive depositions. To that end, we want to make sure we have done our best to properly identify Dr. Ereren's ski instructor on the day in question.

Your client has testified that he had the same blonde female ski instructor on March 8th and March 9th. From reviewing the ski school records (previously provided), it appears that there were only four female ski instructors who taught classes on both March 8th and 9th for levels 7 and below. One of these was Nancy "High Pockets", who Dr. Ereren identified as teaching his wife on those days. We do not have a picture of her. Photos of the other three instructors are identified as photos 5, 7 and 15 in the set of photos we have provided to you.

Please provide us with a signed supplemental interrogatory response indicating whether Dr. Ereren can identify his instructor out of these three photos. If he cannot, please indicate so in the response and we will attempt to narrow the options some other

way. We believe we are entitled to have a response in evidentiary form and also need an identification so that we can produce the most appropriate witness for deposition.

If for some reason you are not willing to proceed as suggested, please let me know in the near future.

Very truly yours,

WILLIAMS & HUNT

Kurt M. Frankenburg

KMF/mcw
Enclosure
ccw/Enc: Bob Black
Judy Murray

79776 1

LAW OFFICES OF
WILLIAMS & HUNT
A PROFESSIONAL CORPORATION

257 EAST 200 SOUTH, SUITE 500
P.O. BOX 45678
SALT LAKE CITY, UTAH 84145-5678

NNIS C. FERGUSON

TELEPHONE (801) 521-5678
FAX (801) 364-4500
E-MAIL dferguson@wilhunt.com

June 29, 2000

Peter C. Collins
BUDGEN, COLLINS & MORTON, L.C.
623 East 2100 South
Salt Lake City, Utah 84106

Re: *Ereren v. Snowbird Corporation*
Our File No.: 1212.0016

Dear Pete:

I am responding to your letter of June 16, 2000. Representations in your letter require that I first respond to your factual representations regarding the status of Dr. Ereren's deposition testimony. You have indicated that Dr. Ereren "is not certain whether his instructor had blonde or light brown hair." I direct your attention to page 28 of Dr. Ereren's deposition where he states "she was I believe in her late 20's, 5'6", 5'4", blonde, 120 to 130 pounds, difficult to tell with the outfit." Dr. Ereren did not equivocate on the color of the ski instructor's hair. Indeed, I can find nowhere in the index where the word "brown" even appears in the deposition transcript.

You also indicate that Dr. Ereren "has not unequivocally stated that there were four people in his class on March 9, 1995." I call your attention to pages 32 and 42 of the deposition. On page 32, I first asked Dr. Ereren how many people were in his class the day before on the 8th of March, and he said "two to four." I asked him how many people were in his class on the 9th, and he said "I believe there were four." He then went on to specifically identify the people whom he believed to have been in the class. Later at page 35, he testifies that he believes that the physician that was in his ski class as well as the others "were waiting at the bottom of the slope" and he believes they were looking at him ski while he was coming down the hill. At page 42, Dr. Ereren relates in some detail that the oriental student in the class was told that she would be better off in a different class or level and that Dr. Ereren continued to ski in the class with the physician, the physician's wife and the ski instructor. I do not believe this testimony to be equivocal in any way and if Dr. Ereren attempts to testify differently at trial, I will point that out to the jury.

Once again, given Dr. Ereren's testimony regarding his skiing ability, the description of the ski instructor, the number of students in the class, Georgia Dumais appears to be the only logical person who would have been his ski instructor on March 9, 1995.

I suggest that we proceed with the deposition of Georgia Dumais. If, after her deposition, you believe there is a reasonable factual basis for taking the deposition of the other ski instructors, then we can explore that issue at that juncture. If this is agreeable, I will check the availability of Georgia Dumais and Mr. Baker for the months of July and August. Please let me know.

Very truly yours,

WILLIAMS & HUNT

Dennis C. Ferguson

DCF/ple

81338

LAW OFFICES OF
WILLIAMS & HUNT
A PROFESSIONAL CORPORATION

257 EAST 200 SOUTH, SUITE 500
P.O. BOX 45678
SALT LAKE CITY, UTAH 84145-5678

JRT M. FRANKENBURG

TELEPHONE (801) 521-5678
FAX (801) 364-4500
E-MAIL kfrankenburg@wilhunt.com

November 6, 2000

Peter C. Collins, Esq.
BUDGEN, COLLINS & MORTON, L.C.
623 East 2100 South
Salt Lake City, Utah 84106

Via Facsimile and U.S. Mail

Re: *Ereren v. Snowbird Corporation*
Our File No.: 1212.0016

Dear Pete:

We have received your letter of November 1, 2000.

With respect to Andrea Martin, we have produced the ski school records which demonstrate that she did not work on the days in question, and we have given you our professional representations that we have spoken with her and her memory is no different. Given our efforts to cooperate, we are disappointed in your continued insistence in taking her deposition. You know that all evidence in the case supports the fact that Ms. Martin has no knowledge of the accident. As you now suggest, we will file a motion for a protective order.

I am puzzled by your continued insistence that we have our client verify our responses to plaintiff's third and fourth sets of interrogatories. I have reviewed the copies of the responses which were enclosed with your letter and I do not see where any substantive responses were given. Objections were made and you were referred to documents already produced. It is really not a big deal, but I don't think verification of these responses is required by the rules, and it is a bit of a hassle for me and my client. I prefer not to waste time and expense in providing unnecessary signatures.

In response to your now modified request that we identify medical associations which held conferences at Snowbird during 1995, a search of records reveals that there appear to be 11 medically related organizations which held conferences in March, 1995 at Snowbird. They are: University of Utah, School of Internal Medicine; Spalding Regional Hospital; Association for Applied Clinical Info Systems; Health Point/Glaxo Pharmaceuticals; Merck & Co.; College of American Pathologists; Discovery Int'l./Otsuka

Pharmaceuticals; First Health; Utah Valley Cardiology; SNR Genesis Knee Meeting; G D Searle; and Incare Medical. Snowbird does not have records identifying the attendees.

Finally, we have been waiting for months for your client to produce the financial records supporting his economic loss claims. I am surprised that you are only now attempting to determine whether Dr. Ereren has documents responsive to requests for production to which you have already given written responses. This causes me to question whether any good faith effort was made to answer any of defendants' requests. Given your failure to produce these documents, as most recently requested in my letter of October 26, 2000, we will proceed now to file a motion to compel.

Very truly yours,

WILLIAMS & HUNT

Kurt M. Frankenburg

KMF/mcw
cc: Bob Black
Judy Murray
80549

LAW OFFICES OF
WILLIAMS & HUNT
A PROFESSIONAL CORPORATION

257 EAST 200 SOUTH, SUITE 500
P.O. BOX 45678
SALT LAKE CITY, UTAH 84145-5678

IRT M. FRANKENBURG

TELEPHONE (801) 521-5678
FAX (801) 364-4500
E-MAIL kfrankenburg@wilhunt.com

November 15, 2000

Peter C. Collins, Esq.
BUDGEN, COLLINS & MORTON, L.C.
623 East 2100 South
Salt Lake City, Utah 84106

Re: *Ereren v. Snowbird Corporation*
Our File No.: 1212.0016

Dear Pete:

As you have requested, I am providing you with the information Snowbird has regarding associations which held meetings at the resort in March 1995. All the information we have is included on the attached listing.

Also enclosed are copies of the surveillance video and photographs which you have requested.

Very truly yours,

WILLIAMS & HUNT

Kurt M. Frankenburg

KMF/mep
cc: Bob Black
Judy Murray
84251

Snowbird Corporation

Snowbird Group Sales - Definite Booking Report — 08/23/95

Sales Person / Coordinator	Arrival Date	Departure Date	Group Name / File No.	Title of Meeting / Projected Attendace / Lodge	Source Code / Projected Room Night	Meeting Type / Actual Room Night	Origin of Attendees / Projected Guest Night	Master Account / Actual Guest Night	Rooming List / Rebook? / Projected Room Rev	Actual Room Rev	Total Overall Projected Revenue
Laura Cappel Kathy DiPietro	03/01/95	03/05/95	AKIN GUMP STRAUSS HAUER & FELD C-0567	MARCH SKI TRIP 30 C	BECH 90	SkiGroup 52	R 90	03-107244 Y 54	N $0.00	$11,856.00 ✓	$18,900.00
Laura Cappel Connie Prudden	03/01/95	03/05/95	IDELWILD SKI GROUP T-1065	IDLEWILD SKI GROUP 20 L	IDLE 35	SkiGroup 26	R 100	00-000000 Y 67	N $0.00	$8,818.00 ✓	$21,000.00
Ellen Birrell No CSN needed	03/01/95	03/15/95	AM CONCRETE INSTITUTE A-0445	AM CONCRETE INST / LODGING ONLY 25 CLT	ACI95 38	Association 38	N 91	00-000000 N 91	N $0.00	$6,226.00 ✓	$19,110.00
Mark Nakada No CSN needed	03/01/95	03/24/95	CERTIFIED VACATIONS T-0007	EARLY WEEK PROGRAM 10 MTCLT	CER1 5	SkiGroup 5	N 10	00-000000 N 10	Y $0.00	$515.00 ✓	$0.00
Mark Nakada No CSN needed	03/01/95	03/24/95	FUNJET VACATIONS T-0133	EARLY WEEK PROGRAM 10 All CLT	FUN1 6	SkiGroup 6	N 12	00-000000 N 12	Y $0.00	$618.00 ✓	$0.00
Mark Nakada No CSN needed	03/01/95	03/24/95	EB SKI TOURS & TRAVEL CO. T-0134	EARLY WEEK PROGRAM 10 All CLT	EBS1 6	SkiGroup 6	N 6	00-000000 N 6	Y $0.00	$618.00 ✓	$0.00
Jeff Ohlson Jeff Ohlson	03/02/95	03/05/95	DONALDSON, LUFKIN & JENRETTE ES-272	WINTER RETREAT 30 C	DLJ95 50	Corporation 40	R 70	03-104343 Y 83	N $0.00	$10,271.00 ✓	$14,700.00
Jody Sceili Jeff Ohlson	03/03/95	03/05/95	DONALDSON, LUFKIN & JENRETTE LE-075	SKI SCHOOL & SPA TREATMENTS 30 OF	0	Corporation 0	N 0	03-104334 Y 0	N $1,895.00	$5,473.00	$0.00
Ellen Birrell Kathy DiPietro	03/04/95	03/11/95	U OF U / SCHOOL OF MEDICINE U-0826	ADVANCES IN INTERNAL MEDICINE 75 C/L	AIM95 275	Medical 220	N 585	03-121798 N 439	Y $0.00	$37,764.00 ✓	$128,700.00
Laura Cappel Kathy DiPietro	03/05/95	03/10/95	AM HERITAGE TRAVEL T-6042	SPALDING REGIONAL HOSPITAL 100 C	AHT95 270	Medical 205	R 700	03-101756 Y 470	N $0.00	$33,577.00 ✓	$147,000.00
Jeff Ohlson Jeff Ohlson	03/07/95	03/09/95	NOVELL EDUCATION ES-281	NOVELL EDUCATION MARCH MEETING 12 L	NOVED 14	Corporation 14	U 20	03-114358 Y 24	Y $0.00	$2,504.00 ✓	$4,200.00
Jeff Ohlson Jeff Ohlson	03/09/95	03/12/95	CMP PUBLICATIONS, INC. ES-077	CLIENT SKI DAY 50 C	CMP1 30	Corporation 50	U 30	03-103497 Y 50	Y $0.00	$7,744.00 ✓	$6,300.00
Ellen Birrell Tom Schild	03/11/95	03/15/95	ASSN FOR APPLIED CLINICAL INFO A-0379	ASSN APPLIED CLINICAL INFO SYSTEMS 150 C	AAC95 225	Association 229	N 300	03-101746 N 319	N $0.00	$30,788.00 ✓	$63,000.00
Todd J. Ness Tom Schild	03/11/95	03/15/95	HEALTH POINT C-0296	GLAXO PHARMACEUTICALS 50 C	HP-95 100	Corporation 150	N 125	03-108260 Y 168	N $0.00	$20,465.00 ✓	$26,250.00
Jon Hansen Kathy DiPietro	03/12/95	03/17/95	MERCK & COMPANY, INC./HUMAN RE C-0908	MERCK & COMPANY, INC. MARCH MTG 45 C	MERCK 180	Corporation 194	N 180	03-113477 Y 202	N $0.00	$32,436.00 ✓	$37,800.00

Snowbird Corporation
Snowbird Group Sales - Definite Booking Report

08/23/95

Sales Person / Coordinator	Arrival Date	Departure Date	Group Name / File No.	Title of Meeting / Projected Attendace / Lodge	Source Code / Projected Room Night	Meeting Type / Actual Room Night	Origin of Attendees / Projected Guest Night	Master Account / Actual Guest Night	Rooming list / Rebook? / Projected Room Rev	Actual Room Rev	Total Overall Projected Revenue
Alysse Eisen Silk Connie Prudden	03/13/95	03/16/95	SNOWBIRD SKI SCHOOL/WOMEN'S WO T-3043	WOMEN'S SKI SEMINARS 10 C	SSWSS 33	SkiGroup 33	N 33	03-119824 N 33	Y $0.00	$2,562.00 ✓	$6,930.00
Jody Sceili Janel Trapp	03/14/95	03/15/95	MERCK & CO. INC. LE-079	TRANSPORTATION 40 OF	0	Corporation 0	N 0	03-113477 N 0	N $825.00	$760.00	$0.00
Alysse Eisen Silk Connie Prudden	03/15/95	03/19/95	WINDHAM SKI GROUP T-6108	WINDHAM SKI GROUP 35 C	WIN95 20	SkiGroup 18	R 35	03-123312 Y 35	Y $0.00	$2,159.00 ✓	$7,350.00
Norma Dehaan Smith Janel Trapp	03/15/95	03/19/95	WINDHAM SKI GROUP T-6108	WINDHAM SKI GROUP 0 C	WIN95 60	SkiGroup 55	R 105	03-123312 Y 106	Y $0.00	$6,477.00 ✓	$22,050.00
Carol Workman Tom Schild	03/16/95	03/20/95	SNOWBIRD SKI & SERENDIPITY SEM T-1016	SSSS GROUP (BOHEMIAN) 150 C	BC95 210	SkiGroup 293	N 435	03-102268 N 628	Y $0.00	NO $60,652.00 ✓	$91,350.00
Jody Sceili Jeff Ohlson	03/17/95	03/18/95	WINDHAM SKI GROUP LE-033	SKI SCHOOL 18 OF	0	SkiGroup 0	N 0	03-123312 Y 0	Y $1,782.00	$1,782.00	$0.00
Jon Hansen Kathy DiPietro	03/17/95	03/19/95	FANTASTIC SPORTS TRAVEL T-6280	SCHICK INCENTIVE SKI TRIP 20 C	SCK95 20	SkiGroup 21	N 40	03-106248 N 40	N $0.00	$3,969.00 ✓	$8,400.00
Todd J. Ness Kathy DiPietro	03/17/95	03/20/95	COLLEGE OF AMERICAN PATHOLOGIS A-0454	IMAGE EXCHANGE COMMITTEE MEETING 15 C	CAP-2 30	Association 42	N 30	03-103569 Y 50	Y $0.00	$6,678.00 ✓	$6,300.00
Todd J. Ness Tom Schild	03/17/95	03/20/95	DILLON, READ & CO., INC. C-0500	DAISYTECH CLOSING DINNER 35 C	DILL 45	Corporation 25	N 75	03-104347 N 45	N $0.00	$5,514.00 ✓	$15,750.00
Alysse Eisen Silk Janel Trapp	03/19/95	03/21/95	INSIDEOUT U-0096	ADVANTAGE SEMINAR 25 C	IO-95 20	Corporation 18	U 20	03-109313 Y 18	Y $0.00	$2,700.00 ✓	$4,200.00
Jon Hansen Connie Prudden	03/19/95	03/23/95	LA SIERRA ACADEMY T-1032	LA SIERRA ACADEMY SKI GROUP 36 C	LSA95 50	SkiGroup 47	R 145	00-000000 Y 173	Y $0.00	$6,273.00 ✓	$30,450.00
Jeff Ohlson Jim Dixon	03/19/95	03/26/95	DEFINITE - NO FILE# ASSIGNED JJO-01	AUFRANC/SHARPLES WEDDING 120 C	ASWED 100	Social 223	N 205	03-101718 N 501	N $0.00	$35,813.00	$43,050.00
Laura Cappel Kathy DiPietro	03/20/95	03/22/95	ABOVE & BEYOND TRAVEL T-6277	EPRI/ANP 15 C	A&B 27	Corporation 27	N 27	03-105229 Y 32	N $0.00	$3,791.00 ✓	$5,670.00
Carol Workman Jeanine Wyatt	03/20/95	03/26/95	HAMBRECHT & QUIST LE-014	HAMBRECHT & QUIST RETREAT 250 C	LEHQ 705	Corporation 546	N 800	03-108243 N 793	Y $500.00	NO $84,414.00	$168,000.00
Alysse Eisen Silk Janel Trapp	03/23/95	03/26/95	COLDWELL BANKER U-0276	SKI INVITATIONAL 150 C	CB95 250	Corporation 171	U 325	03-103391 N 320	Y $0.00	$23,854.00 ✓	$68,250.00

Snowbird Corporation

Snowbird Group Sales - Definite Booking Report — 08/23/95

Sales Person / Coordinator	Arrival Date	Departure Date	Group Name / File No.	Title of Meeting / Projected Attendace / Lodge	Source Code / Projected Room Night	Meeting Type / Actual Room Night	Origin of Attendees / Projected Guest Night	Master Account / Actual Guest Night	Rooming List	Rebook? / Projected Room Rev	Actual Room Rev	Total Overall Projected Revenue
Todd J. Ness Tom Schild	03/23/95	03/27/95	DISCOVERY INT'L C-0875	OTSUKA PHARMACEUTICALS INVESTIGATOR 150 C	DI-95 300	Medical 178	N 550	03-104198 N 296		Y $0.00	$26,307.00 ✓	$115,500.00
Caroline Shav Connie Prudden	03/24/95	03/25/95	 NN-001	SKI UT/DELTA TA FAM TOUR 36 C	SKI01 0	FAM 0	N 0	N 0		Y $0.00	$0.00	$0.00
Jody Sceili Janel Trapp	03/25/95	03/25/95	CB COMMERCIAL LE-078	NASTAR RACE 80 DF	 0	SkiGroup 0	U 0	03-103391 N 0		Y $500.00	$400.00	$0.00
Marian Lovell Janel Trapp	03/25/95	04/02/95	BRANDEIS UNIVERSITY / DATA COM GE-114	IEEE DATA COMPRESSION 250 C	DC95 900	Sci/Engin 827	N 1,300	03-109228 N 1,214		Y $0.00	$83,027.00 ✓	$273,000.00
Alysse Eisen Silk Janel Trapp	03/26/95	03/30/95	FIRST HEALTH U-0031	SALES TRAINING SUMMIT 35 C	95-FH 90	Corporation 91	U 90	03-106250 N 96		N $0.00	$9,527.00 ✓	$18,900.00
Jeff Ohlson Jeff Ohlson	03/27/95	03/30/95	CONVATEC ES-284	CONVATEC'S WINTER MTG 6 C	CON95 18	Corporation 18	N 18	03-103578 Y 18		N $0.00	$2,160.00 ✓	$2,826.00
Alysse Eisen Silk Kathy DiPietro	03/29/95	04/02/95	UT VALLEY CARDIOLOGY U-0026	INTERVENTIONAL CARDIOLOGY SYMPOSIUM 140 C/L	CARDS 200	Medical 119	U 400	03-121836 N 161		Y $0.00	$12,630.00 ✓	$62,000.00
Jody Sceili Tom Schild	03/29/95	04/02/95	YPO - NEW JERSEY LE-076	SKI SCHOOL, SPA, VIDEO, SKI PATROL 12 DF	 0	SkiGroup 0	N 0	03-114422 Y 0		N $5,000.00	$4,138.00	$0.00
Todd J. Ness Kathy DiPietro	03/29/95	04/03/95	NAT'L ASSN OF EDUCATION OFFICE A-1205	BOARD & INSTITUTE MEETINGS 175 C/L	NAEOP 300	Association 173	N 450	03-114398 N 364		N $0.00	$17,304.00 ✓	$70,650.00
Alysse Eisen Silk Tom Schild	03/29/95	04/03/95	YPO - NEW JERSEY CHAPTER T-1064	YPO SKI GROUP WINTER RETREAT 30 C	YPO95 45	SkiGroup 31	R 90	99-999999 Y 58		N $0.00	$3,268.00 ✓	$14,130.00
Jeff Ohlson Jeff Ohlson	03/30/95	04/01/95	PARLANT TECHNOLOGY ES-287	PARLANT TECHNOLOGY SPRING MTG 10 L	PARLT 9	Corporation 9	U 9	03-116357 N 9		N $0.00	$792.00 ✓	$1,413.00
Ellen Birrell Tom Schild	03/30/95	04/03/95	COMMODORE TRAVEL T-3039	SNR GENESIS KNEE MEETING 70 C	SN395 110	Medical 90	N 120	03-119799 Y 105		N $0.00	$10,135.00 ✓	$18,840.00
Todd J. Ness Tom Schild	03/30/95	04/04/95	G D SEARLE C-1192	MANAGED HEALTHCARE PROGRAM 35 C	SEA95 65	Corporation 77	N 90	03-119830 Y 95		Y $0.00	$7,566.00 ✓	$14,130.00
Jody Sceili Kathy DiPietro	03/31/95	03/31/95	NAT'L ASSN OF EDUCATIONAL OFFI LE-070	FASHION SHOW 75 DF	 0	Association 0	N 0	03-114398 N 0		N $100.00	$100.00	$0.00
Jeff Ohlson Jeff Ohlson	03/31/95	04/02/95	INCARE MEDICAL ES-266	INCARE WINTER MTG 40 C	INCR1 30	Corporation 40	N 50	03-109312 Y 64		N $0.00	$3,977.00 ✓	$10,500.00

Snowbird Corporation

Snowbird Group Sales - Definite Booking Report 08/23/95

Sales Person / Coordinator	Arrival Date	Departure Date	Group Name / File No.	Title of Meeting	Projected Attendace	Lodge	Source Code	Meeting Type	Origin of Attendees	Master Account	Rooming List	Reboot?	Projected Room Night	Actual Room Night	Projected Guest Night	Actual Guest Night	Projected Room Rev	Actual Room Rev	Total Overall Projected Revenue
Jeff Ohlson Jeff Ohlson	03/31/95	04/02/95	CELCO - PACIFIC DIVISION ES-286	WINTER SKI WEEKEND	25	C	CELCO 28	Corporation 31	N 50	03-103582 84	Y	N	$0.00	$4,107.00	✓				$7,850.00
			Total this month:		2,695								4,989	4,446	7,811	7,333	$10,512.00	$640,989.00	$1,575,249.00
			Count:		46														
			Grand Totals:										4,989	4,446	7,811	7,333	$10,512.00	$640,989.00	$1,575,249.00
			Count:		46														

LAW OFFICES OF
WILLIAMS & HUNT
A PROFESSIONAL CORPORATION

257 EAST 200 SOUTH, SUITE 500
P.O. BOX 45678
SALT LAKE CITY, UTAH 84145-5678

JRT M. FRANKENBURG

TELEPHONE (801) 521-5678
FAX (801) 364-4500
E-MAIL kfrankenburg@wilhunt.com

November 15, 2000

Peter C. Collins, Esq.
BUDGEN, COLLINS & MORTON, L.C.
623 East 2100 South
Salt Lake City, Utah 84106

Via Facsimile and U.S. Mail

Re: *Ereren v. Snowbird Corporation*
Our File No.: 1212.0016

Dear Pete:

We have received your faxed letter of November 15, 2000.

The information we have on the associations which met at Snowbird in March, 1995 has already been placed in the mail to you, pursuant to your last letter request.

With regard to your request that we reconsider and provide further responses to your earlier document requests and interrogatories, we respectfully decline to do so. We have considered them, responded reasonably to them with what discoverable information we have, and your attempts to compel further, or different responses have been soundly rejected by the trial court. You may not like the judge's ruling, but that does not make an issue for appeal.

We are sure that you do consider it important to find "Dr. Scott." Whether your client also considers it important is doubtful. Given Dr. Ereren's deposition testimony and the information he claimed to have, we find it very interesting that he still has not located the alleged "Dr. Scott."

Finally, you again ask us to confirm the date of the alleged "accident." We have provided you with the ski school records. We have told you the date of validity of the ski ticket you sent to us. As I stated in my letter of October 25th, we cannot and will not confirm the date of an accident or "incident" which we do not believe ever occurred.

Your client testified that it happened on March 9, 1995. If his testimony is not sufficient for you, this is a case you should not have filed.

Very truly yours,

WILLIAMS & HUNT

Kurt M. Frankenburg

KMF/mcw
cc: Bob Black
Judy Murray
80549